| FOR THE NOR | TED STATES DISTRICT CO THERN DISTRICT OF AL MIDDLE DIVISION | |
|---|---|---|
| STEPHEN PAUL HARP, |) | U.S. DISTRICT COURT N.D. OF ALABAMA |
| Plaintiff, v. |))) CV-04- | -PT-2454-M |
| COLE LUMPKIN, an individual, ERIC ROEBUCK, an individual, CHIEF RICHARD CROUCH, an individual; and THE CITY OF |) Etowah Cour) | rom the Circuit Court of nty, Alabama CV-04-736-D |
| GADSDEN, a municipal corporat | ion,) | |

NOTICE OF REMOVAL

Defendants.

COME NOW Defendants Cole Lumpkin ("Lumpkin"), Eric Roebuck ("Roebuck"), Chief Richard Crouch ("Crouch"), and the City of Gadsden ("Gadsden") (collectively hereafter referred to as "Defendants") and file this Notice of Removal, removing this cause to the United States District Court for the Northern District of Alabama, Middle Division. As grounds for removal, Defendants respectfully show unto the Court the following:

- 1. This action was filed on or about July 16, 2004 in the Circuit Court of Etowah County, Alabama and is now pending in said Court as Civil Action No. CV-04-736-D. Copies of the Summons and Complaint in Case No.: CV-04-736-D were served on Gadsden on July 26, 2004. True and correct copies of all process, pleadings, and orders filed in this action are attached hereto as Exhibit 1.
- 2. Pursuant to 28 U.S.C. § 1446(a), removal to this Court is proper because the Circuit Court of Etowah County is within the Northern District of Alabama, Middle Division.

- 3. In compliance with 28 U.S.C. § 1446(b), this removal is filed within thirty days after any defendant first received, through service or otherwise, a copy of the summons and initial pleading setting forth Plaintiff's claims for relief. Defendant Gadsden was the first defendant to receive notice of this action and Gadsden first received actual notice when it was served with a copy of the Summons and Complaint on July 26, 2004.
- 4. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being filed with the Clerk of the Circuit Court of Etowah County, Alabama. A copy of this Notice of Removal is also being served upon counsel for Plaintiff.
- 5. This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331 and 1343. This action is removable pursuant to 28 U.S.C. § 1441(b) because the gravamen of Plaintiff's Complaint raises a federal question. Plaintiff asserts causes of action against all Defendants for assault (Count Two), unlawful restraint (Count Three), assault and battery (County Four), and negligent training (Count Five). In addition to these state law claims, Plaintiff alleges in Count One that the Defendants' conduct constituted a violation of and deprivation of certain constitutional rights secured to the Plaintiff by 42 U.S.C. § 1983. Plaintiff seeks costs and attorney's fees pursuant to 42 U.S.C. § 1988. Complaint at ¶¶ 1-8. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1367.
 - 6. All Defendants join in and consent to this removal.

WHEREFORE, PREMISES CONSIDERED, Defendants Lumpkin, Roebuck, Crouch, and Gadsden pray that further proceedings in the Circuit Court of Etowah County, Alabama be discontinued and that this suit be removed to The United States District Court for the Northern District of Alabama, Middle Division.

Respectfully submitted,

Carter H. Dukes
Kimberly W. Geisler
Attorneys for Defendants
City of Gadsden, Chief Richard Crouch,
Cole Lumpkin, and Eric Roebuck

OF COUNSEL:

HUCKABY SCOTT & DUKES, P.C. 2100 Third Avenue North, Suite 700 Birmingham, Alabama 35203 (205) 251-2300

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing upon counsel of record by placing a copy of same in the United States mail, first class postage prepaid and addressed as follows:

Marcus W. Reid, Esq. Post Office Box 2303 Anniston, Alabama 36202

DONE this the He day of August, 2004.

Kumbarly Bude

| <u>Case 4:04-cv-02</u> | <u>2454-RBP Docu</u> men | t 1 Filed (| 08/1 <u>1/04</u> P | | |
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| State of Alabama Unified Judicial System | SUMI | MONS | | - | e Number |
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| Form C-34 Rev 6/88 | | | | ···· | |
| NTHE CIRCUIT | | COURT OF _ | EŢOWAH | | COUNTY |
| Plaintiff Stephen Par | ul Harn | , Øefendan | Cole Lum | okin. Eri | c Roebuck |
| riainuit beephen rus | ar narp | / belenden | Chief Ri | chard Cro | |
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| NOTICE TO Officer C | Cole Lumpkin, Gadsde | en Police | Dept., 90 | Broad St | reet, |
| Gadsden, THE COMPLAINT WHICH IS A | AL 39501 TTACHED TO THIS SUMMONS | IS IMPORTANT | AND YOU MUS | | DIATE ACTION |
| TO PROTECT YOUR RIGHTS. ' | YOU OR YOUR ATTORNEY A OR DENYING EACH ALLEGATIO | RE REQUIRED | TO FILE THE OR | IGINAL OF Y | OUR WRITTEN |
| COPY OF YOUR ANSWER MU | ST BE MAILED OR HAND DELI | VERED BY YOU | OR YOUR ATTO | DRNEY TO TH | E PLAINTIFF OR |
| PLAINTIFF'S ATTORNEY Ma | | | | ~~· | WHOSE |
| ADDRESS IS P.O. Box | 2303, Anniston, AL | 36202 | · · · · · · · · · · · · · · · · · · · | ····· | * |
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| TO ANY SHERIFF OR ANY | PERSON AUTHORIZED by | y the Alaban | na Rules of Civ | il Procedur | e: |
| You are hereby com | manded to serve this sum | nmons and a | copy of the | complaint | in this action |
| upon the defendant. | | | | • | |
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| State of Alabama Unified Judicial System | SUMMONS | Case Number |
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| IN THE CIRCUIT | COURTOFE | TOWAH COUNTY |
| Plaintiff Stephen Paul Harp | | Cole Lumpkin, Eric Roebuck, Chief Richard Crouch and City of Gadsden |
| NOTICE TO Officer Eric Roebu Gadsden, AL 39501 THE COMPLAINT WHICH IS ATTACHED TO THE TO PROTECT YOUR RIGHTS. YOU OR YOUR ANSWER, EITHER ADMITTING OR DENYING EL COPY OF YOUR ANSWER MUST BE MAILED OP PLAINTIFF'S ATTORNEY Marcus W. Re ADDRESS IS P.O. Box 2303, Ann. | HIS SUMMONS IS IMPORTANT AND ATTORNEY ARE REQUIRED TO PACH ALLEGATION IN THE COMPLAINER HAND DELIVERED BY YOU OR BEID | D YOU MUST TAKE IMMEDIATE ACTION FILE THE ORIGINAL OF YOUR WRITTEN INT WITH THE CLERK OF THIS COURT. A |
| THIS ANSWER MUST BE MAILED OR DELIVER WERE DELIVERED TO YOU OR A JUDGMENT THINGS DEMANDED IN THE COMPLAINT. | | AFTER THIS SUMMONS AND COMPLAINT GAINST YOU FOR THE MONEY OR OTHER |
| upon the defendant. ☐ Service by certified mail of the Date 7 110 104 | nis summons is initiated in pursuar Qo the slabar | upon the queitten request of manufest of initial accedure. By: |
| | Clerk/Register | |
| ☐ Certified Mail is hereby requested | | [N] |
| | Plaintiff's/Atto | rney's Signature |
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| Form C-34 Rev 6/88 | |
| IN THE CIRCUIT | COUNTY |
| | Gold Tomobile Bade Backwald |
| Plaintiff Stephen Paul Harp | v Defendant Cole Lumpkin, Eric Roebuck, Chief Richard Crouch and City of Gadsden |
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| NOTICE TO Chief Richard Croud | ch, Gadsden Police Dept., 90 Broad Street, |
| Gadsden, AL 35901 THE COMPLAINT WHICH IS ATTACHED TO THI TO PROTECT YOUR RIGHTS. YOU OR YOUR ANSWER, EITHER ADMITTING OR DENYING EACOPY OF YOUR ANSWER MUST BE MAILED OF PLAINTIFF'S ATTORNEY Marcus W. Re- | IS SUMMONS IS IMPORTANT AND YOU MUST. TAKE IMMEDIATE ACTION ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN CH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A R HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR WHOSE |
| ADDRESS IS P.O. Box 2303, Anni | ston, AL 36202 . |
| THIS ANSWER MUST BE MAILED OR DELIVERE WERE DELIVERED TO YOU OR A JUDGMENT B THINGS DEMANDED IN THE COMPLAINT. | DAYS AFTER THIS SUMMONS AND COMPLAINT Y DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER |
| TO ANY CUERIES OR ANY REDCON AUT | HODIZED L. the Aleberta Bules of Civil December 2 |
| TO ANY SHERIFF OR ANY PERSON AUT | HORIZED by the Alabama Rules of Civil Procedure: |
| You are hereby commanded to se upon the defendant. | rve this summons and a copy of the complaint in this action |
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| Alabama on 7- 20 | -15 |
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| Case 4:04-cv-02454-RBP | Document 1 File | <u>d 08</u> /1 <u>1/04</u> | Page 8 of 20 |
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| Unified Judicial System | - CIVIL + | 21019 | CV-04-136-DSN |
| Form C-34 Rev 6/88 | - CIVIL # / | <u> </u> | - CV-09-106-101 |
| IN THE CIRCUIT | courf o | F ETOWAH | - COUNTY |
| Plaintiff Stephen Paul Harp | V. Defend | Chief City | Lumpkin, Eric Roebuck, Richard Crouch and of Gadsden Gadsden |
| NOTICE TO CITY OF GA | dsden, 90 P | broad i | St. 35901 |
| THE COMPLAINT WHICH IS ATTACHED TO THE TO PROTECT YOUR RIGHTS. YOU OR YOUR ANSWER, EITHER ADMITTING OR DENYING E COPY OF YOUR ANSWER MUST BE MAILED PLAINTIFF'S ATTORNEY Marcus W. R. | LATTORNEY ARE REQUIRI ACH ALLEGATION IN THE C OR HAND DELIVERED BY Y | ED TO FILE THE COMPLAINT WIT | E ORIGINAL OF YOUR WRITTEN TH THE CLERK OF THIS COURT. A |
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| TO ANY SHERIFF OR ANY PERSON AU | THORIZED by the Alab | oama Rules o | f Civil Procedure: |
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Case 4:04-cv-02454-RBP Document 1 Filed 08/11/04 Page 9 of 20

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| | GENERAL INFORMATION | |
| IN THE CIRCUIT COURT OF | ETOWAH | COUNTY |
| PLAINTIFF Stephen Paul Har | v. DEFENDANT Col | e Lumpkin, et al. |
| <u>=</u> == | ndividual First Defendant Other | Business 🔀 Individual Government Other |
| NATURE OF SUIT: Select primary | y cause of action. | |
| TORTS PERSONAL INJURY | ☐ PFAB ~ Protection | Facer Abuse |
| ☐ WDEA ~ Wrongful Death | ☐ RPRO ~ Real Prope | - |
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| ☐ TOLM - Malpractice - Legal | Injunction | |
| ☐ TOOM − Malpractice - Other | ☐ MSHC - Habeas Co | rpus/Extraordinary Writ |
| ☐ TOFR — Fraud | 🗌 ADPA – Admin. Pro | ocedure Act |
| TOXX - Other: | FELA - Railroad/So | eaman (FELA) |
| | ☐ COMP - Workmen' | s Compensation |
| TORTS PROPERTY INJURY | COND - Condemna | ition (Fruits of Crime, Rt of Way, Aband. |
| ☐ TOPE — Personal Property | Vehicle) | |
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STEPHEN PAUL HARP VS COLE LUMPKIN, ET ALS

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Case 4:04-cv-02454-RBP Document 1 Filed 08/11/04 Page 10 of 20 State of Alabama Case Number **SUMMONS** Unified Judicial System CU-04-736 - CIVIL -Form C-34 Rev 6/88 **ETOWAH** COURT OF COUNTY IN THE CIRCUIT v. Defendant Cole Lumpkin, Eric Roebuck, Stephen Paul Harp Plaintiff Chief Richard Crouch and City of Gadsden NOTICETO Officer Cole Lumpkin, Gadsden Police Dept., 90 Broad Street,
Gadsden, AL 39501 THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST, TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY Marcus W. Reid ADDRESS S P.O. Box 2303, Anniston, AL 36202 THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN DAYS AFTER THIS SUMMONS AND COMPLAINT WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure: XX You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant. Service by certified mail of this summons is initiated upon the written request of pursuant to the Alabama Rules of Chil Procedure. Certified Mail is hereby requested. Plaintiff's/Attorney's Signature RETURN ON SERVICE: Return receipt of certified mail received in this office on I certify that I personally delivered a copy of the Summons and Complaint to Alabama on JUL 1.6 2004 (Date) BILLY YATES CLERK, CIRCUIT COURT Date Server's Signature Address of Server Type of Process Server

| State of Alabama Unified Judicial System | SUMMONS | Case Number |
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| Form C-34 Rev 6/88 | CIVIL | - Dsn |
| IN THE CIRCUIT | COURT OF | ETOWAH COUNT |
| Plaintiff Stephen Paul Harp | • | Cole Lumpkin, Eric Roebuck Chief Richard Crouch and City of Gadsden |
| NOTICETO Officer Eric Roel | buck, Gadsden Police De | ept., 90 Broad Street, |
| Gadsden, AL 39501 THE COMPLAINT WHICH IS ATTACHED TO TO PROTECT YOUR RIGHTS. YOU OR YO ANSWER, EITHER ADMITTING OR DENYING COPY OF YOUR ANSWER MUST BE MAILE PLAINTIFF'S ATTORNEY Marcus W. | O THIS SUMMONS IS IMPORTANT AN OUR ATTORNEY ARE REQUIRED TO GEACH ALLEGATION IN THE COMPL ED OR HAND DELIVERED BY YOU OF | FILE THE ORIGINAL OF YOUR WRITTE! AINT WITH THE CLERK OF THIS COURT. A |
| ADDRESS IS P.O. Box 2303, An | nniston, AL 36202 | |
| THINGS DEMANDED IN THE COMPLAINT. | | |
| TO ANY SHERIFF OR ANY PERSON A You are hereby commanded to upon the defendant. Service by certified mail of | serve this summons and a co | opy of the complaint in this action |
| You are hereby commanded to upon the defendant. Service by certified mail of | serve this summons and a co | upon the written request of Rule of Civil Procedure. |
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Case 4:04-cv-02454-RBP Document 1 Filed 08/11/04 Page 12 of 20 State of Alabama Case Number **SUMMONS** Unified Judicial System - CIVIL -Form C-34 Rev 6/88 ETOWAH COURT OF COUNTY IN THE CIRCUIT v. Defendant Cole Lumpkin, Eric Roebuck, Stephen Paul Harp Plaintiff Chief Richard Crouch and City of Gadsden NOTICETO Chief Richard Crouch, Gadsden Police Dept., 90 Broad Street Gadsden, AL 35901
THE COMPLAINT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF OR PLAINTIFF'S ATTORNEY Marcus W. Reid ADDRESS S P.O. Box 2303, Anniston, AL 36202 DAYS AFTER THIS SUMMONS AND COMPLAINT THIS ANSWER MUST BE MAILED OR DELIVERED WITHIN WERE DELIVERED TO YOU OR A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT. TO ANY SHERIFF OR ANY PERSON AUTHORIZED by the Alabama Rules of Civil Procedure: XX You are hereby commanded to serve this summons and a copy of the complaint in this action upon the defendant. ☐ Service by certified mail of this summons is initiated upor fine request of Clerk/Register Certified Mail is hereby requested. Plaintiff's/Attorney's Signature **RETURN ON SERVICE:** Return receipt of certified mail received in this office on (Date) I certify that I personally delivered a copy of the Summons and Complaint to Alabama on JUL 1 6 2004 (Date) BILLY YATES CLERK, CIRCUIT COURT Date Server's Signature

Type of Process Server

Address of Server

| Case 4:04-cv-02454-RBP | Document 1 Filed 08/1: | 1 <u>/04 Page 13 of 20</u> |
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| Unified Judicial System | SUMMONS | 01 ht 126 |
| Form C-34 Rev 6/88 | - CIVIL - | CV.04-136- |
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| IN THE CIRCUIT | COURT OFET | COUNTY |
| Plaintiff Stephen Paul Harp | Ch | ole Lumpkin, Eric Roebuck, nief Richard Crouch and ity of Gadsden |
| NOTICE TO CITY of Ga | dsden 90 Broad | Lst. Gadsden A |
| THE COMPLAINT WHICH IS ATTACHED TO TO PROTECT YOUR RIGHTS. YOU OR YO ANSWER, EITHER ADMITTING OR DENYING COPY OF YOUR ANSWER MUST BE MAILE PLAINTIFF'S ATTORNEY Marcus W. | UR ATTORNEY ARE REQUIRED TO FI E EACH ALLEGATION IN THE COMPLAII D OR HAND DELIVERED BY YOU OR Y | LE THE ORIGINAL OF YOUR WRITTEN NT WITH THE CLERK OF THIS COURT. A |
| ADDRESS IS P.O. Box 2303, An | niston, AL 36202 | · |
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| TO ANY SHERIFF OR ANY PERSON A | • | |
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| Certified Mail is hereby reques | ted | |
| | Plaintiff's/Attori | ney's Signature |
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| | | (Date) |
| ☐ I certify that I personally deliv | gered a copy of the Summons an | |
| Alabama on | | FILED |
| 3) | Date) , | |
| | | JUL 1 6 2004 |
| | | BILLY YATES |
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IN THE CIRCUIT COURT OF ETOWAH COUNTY, ALABAMA

| STEPHEN PAUL HARP, |) | |
|---|-----|---------------------------|
| Plaintiff, |) | |
| vs. |) | CASE NO.: CV-04- 736- DSM |
| COLE LUMPKIN an individual; ERIC ROEBUCK, an individual; |) | |
| CHIEF RICHARD CROUCH, an individual; and the CITY OF |) | |
| GADSDEN, a municipal corporation, | .) | |
| Defendants. |) | |
| |) | |

COMPLAINT

Comes now the plaintiff in the above-styled cause, by and through counsel, and for claim herein avers and says as follows:

FACTUAL ALLEGATIONS

- 1. The Plaintiff is an individual resident citizen of Etowah County, Alabama, over the age of 19 years and in all respects competent to prosecute this action.
- 2. The Defendant City of Gadsden is a municipal corporation located in Etowah County, Alabama and subject to the jurisdiction of this Court. The individual named defendants in this action are all over the age of 19 years and are subject to the jurisdiction of this Court.
- 3. That on or about the 27th day of July, 2002, the Plaintiff Stephen Paul Harp was physically assaulted and beaten by Gadsden police officers (Defendants) Cole Lumpkin and Eric Roebuck, and suffered serious physical injuries as a proximate consequence thereof. As a result of incidents prothat date, the Plaintiff Stephen Paul Harp was charged with certain misdemean derinfor 200 ffenses

CLERK, CIRCUIT COURS

including Disorderly Conduct and Resisting Arrest. The Plaintiff is not guilty of any criminal offense, and the complaining party, Defendant Eric Roebuck, was well aware of the Plaintiffs' innocence of the offenses at the time the charges were filed.

- 4. That the aforesaid assaults and actions of the officers were completely unprovoked and unjustified as a matter of law and constituted intentional, malicious and inexcusable acts on the part of the aforesaid officers, each of whom were officers, servants and/or employees of the City of Gadsden, Alabama, at all pertinent times, and acting within the line and scope of their employment.
- 5. That as a proximate consequence of the said wrongful acts, the Plaintiff has been caused to suffer physical pain and suffering, as well as psychological damages, and to incur expenses in treating his injuries. Said Plaintiff has also been caused to suffer humiliation, embarrassment and mental anguish as a proximate result of the officers' outrageous conduct.
- 6. That the Defendant City of Gadsden and Defendant Richard Crouch failed to properly supervise, direct, train and/or control the individual officers herein, their subordinates, and as a proximate consequence thereof, Plaintiff was injured and damaged as aforesaid. Moreover, the Plaintiff avers upon information and belief that the said Defendants either formally or informally promoted, caused or authorized the acts complained of herein pursuant to an official policy or custom.
- 7. During all times pertinent hereto, the Defendants City of Gadsden and Richard Crouch and the Defendants herein acted under color of law, to-wit, the statutes, ordinances, customs, regulations and usages of the State of Alabama, the City of Gadsden and Etowah County. The Defendants, separately and in concert, engaged in the illegal and unconscionable conduct herein mentioned to the JUL 1 6 2004 irreparable injury of the Plaintiff and deprived the Plaintiff of the rights, privileges and invalides secured to him by the Fourteenth Amendment to the Constitution of the United States and the laws

of the United States and the State of Alabama.

COUNT ONE

Plaintiff adopts, realleges, and incorporates by reference the averments of paragraphs One through Seven of the Plaintiff's Complaint as completely as if fully set out herein.

8. Plaintiff avers that the defendants' conduct alleged above constituted a violation of and the deprivation of certain rights secured to the plaintiff by 42 U.S.C. §1983, and as a proximate consequence thereof, the plaintiff was injured and damaged as aforesaid.

WHEREFORE, IN THE PREMISES, the plaintiff demands judgment of the defendants in an amount to be determined by the jury, punitive damages included, for violation of the plaintiff's rights under the Constitution of the United States of America and the State of Alabama, actionable pursuant to 42 U.S.C. §1983; plus costs of suit and attorney's fees pursuant to 42 U.S.C. §1988.

COUNT TWO

The plaintiff adopts, realleges and incorporates by reference the averments in paragraphs One through Eight of the Plaintiff's Complaint as completely as if fully set out herein.

9. That the conduct of the defendants herein constituted a civil assault upon the plaintiff, the use of verbal abuse and physical action, and the use of force and threats accompanied by an unjustifiable demand, the compliance with which would avert the threat. As a result of said conduct of the defendants, the plaintiff was injured and damaged as heretofore alleged.

WHEREFORE, IN THE PREMISES, the plaintiff demands judgment of the defendants in an amount to be determined by the jury, punitive damages included, for civil assaft. ILED

COUNT THREE

JUL 1 6 2004

The plaintiff adopts, realleges and incorporates by reference the averments in Plaintiff's Court through Nine of the Plaintiff's Complaint as completely as if fully set out herein.

10. The defendants herein unlawfully restrained and detained the plaintiff, contrary to his will and without due process of law, with malice. As a proximate and legal consequence of said wrongful conduct, the plaintiff was injured and damaged as heretofore alleged.

WHEREFORE, IN THE PREMISES, the plaintiff demands judgment of the defendants in an amount to be determined by the jury, punitive damages included, for false arrest.

COUNT FOUR

The plaintiff adopts, relleges, and incorporates by reference the averments in paragraphs One through Nine of the Plaintiff's Complaint as completely as fully set out herein.

- 11. That the defendants Cole Lumpkin and Cliff Heard committed assault and battery upon the Plaintiff Stephen Paul Harp in that said defendants directed abusive and threatening words toward the plaintiff Stephen Paul Harp at the time of their physical assaults upon the plaintiff as alleged herein, and proceeded to beat the plaintiff Stephen Paul Harp about the head and body with various instruments and their fists, causing severe injuries.
- 12. That the conduct of said individual party defendants constituted an attempt or offer with force or violence to do a corporal hurt to the Plaintiff Stephen Paul Harp, with malice or wantonness, attendant with such circumstances at the time to denote an intention to do such acts, coupled with the ability to carry such intent to effect. The conduct of said defendants also constituted the use of excessive force and/or the touching of the plaintiff by said defendants in rudeness and/or anger.
- 13. That, at all times pertinent hereto, said defendants were the agents, servants or employees of defendant City of Gadsden and under the supervision of said department and on their master's business at the time of the conduct alleged herein.

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- 14. That, as a proximate consequence of said defendants' conduct, plaintiff as if juilly and damaged as heretofore alleged.

 BILLY YATES
 CLERK, CIRCUIT COURT

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WHEREFORE, IN THE PREMISES, the plaintiff demands judgment of the defendants in an

amount to be determined by the jury, punitive damages included, for assault and battery.

COUNT FIVE

The plaintiff adopts, realleges and incorporates by reference the averments in paragraphs One

through Fourteen of the Plaintiff's Complaint as completely as if fully set out herein.

15. That the defendants herein negligently caused or allowed the conduct which resulted in

plaintiff's injuries as heretofore alleged, or in the alternative, acted in conscious disregard of the

known risk that such conduct and/or injuries could occur. The defendants each had an affirmative

duty to ensure the health and safety of citizens in the City of Gadsden, Etowah County, Alabama and

to ensure that excessive force was not used in effecting any arrest. Said defendants breached that

duty by allowing persons of poor judgment and known violent propensities to continue in the position

of police officer, or by allowing inadequately or incorrectly trained persons to continue in such

positions, or negligently trained and/or negligently supervised said officers and as a proximate

consequence thereof, the plaintiff was injured and damaged as alleged herein.

WHEREFORE, IN THE PREMISES, the plaintiff demands judgment of the defendants in an

amount to be determined by the jury, punitive damaged included, for negligence and willful and

wanton conduct.

Respectfully submitted

MARCUS W. REID

Attorney for the Plaintiff

P.O. Box 2303 Anniston, AL 36202

202 BILLY YATES

(256) 236-1240

CLERK, CIRCUIT COURT

Plaintiff demands trial by struck jury in this cause.

MARCUS W. REID

SERVE DEFENDANTS AT:

Chief Richard Crouch Gadsden Police Dept. 90 Broad Street Gadsden, AL 35901

Officer Cole Lumpkia: Gadsden Police Dept. 90 Broad Street Gadsden, AL 39501

Officer Eric Roebuck Gadsden Police Dept. 90 Broad Street Gadsden, AL 35901

City Clerk City of Gadsden 90 Broad Street Gadsden, AL 35901

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BILLY YATES
CLERK, CIRCUIT COURT

| AVS0351 | CV 2004 000736.00 |
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| | JUDGE: DAN SHAUN MALONE |
| ALABAMA JUDICIA CASE ACTION CIRCUIT CI | SUMMARY |
| IN THE CIRCUIT COURT OF ETOWAH | COUNTY |
| STEPHEN PAUL HARP VS COLE LUMPKIN, ET FILED: 07/16/2004 TYPE: CIVIL RIGHTS | TYPE TRIAL: JURY TRACK: |
| ************************************ | CA DATE: PAYMENT: |
| PLAINTIFF 001: HARP STEPHEN PAUL | ATTORNEY: REID MARCUS W REI007 |
| , AL 00000-0000 PHONE: (256)000-0000 ENTERED: 07/21/2004 ISSUED: ANSWERED: ANSWERED: | TYPE: JUDGEMENT: |
| DEFENDANT 001: LUMPKIN COLE OFFICER GADSDEN POLICE DEPT 90 BROAD STREET GADSDEN. AL 35901-0000 | ATTORNEY: *** PRO SE *** |
| GADSDEN, AL 35901-0000 PHONE: (256)000-0000 ENTERED: 07/21/2004 ISSUED: ANSWERED: ANSWERED: | TYPE: JUDGEMENT: |
| i DEFENDANT 002: ROEBUCK ERIC OFFICER GADSDEN POLICE DEPT 90 BROAD STREET GADSDEN, AL 35901-0000 | ATTORNEY: *** FRO SE *** |
| PHONE: (256)000-0000 ENTERED: 07/21/2004 ISSUED: SERVED: ANSWERED: | TYPE: JUDGEMENT: |
| DEFENDANT 003: CROUCH RICHARD CHIEF GADSDEN POLICE DEPT 90 BROAD STREET GADSDEN, AL 35901-0000 PHONE: (256)000-0000 | ATTORNEY: *** PRO SE *** |
| PHONE: (256)000-0000 ENTERED: 07/21/2004 ISSUED: SERVED: ANSWERED: | TYPE: |
| DEFENDANT 004: GADSDEN CITY OF 90 BROAD STREET | ATTORNEY: *** PRO SE *** |
| GADSDEN, AL 35901-0000 PHONE: (256)000-0000 ENTERED: 07/21/2004 ISSUED: SERVED: ANSWERED: | TYPE: JUDGEMENT: |
| SUMMONS & COMPLAINT FILED. | |
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| | CV 2004 000736.00 |